

IN THE
SUPREME COURT
OF CANADA.

ON APPEAL FROM THE
SUPREME COURT OF NOVA SCOTIA.

BETWEEN

PETER H. LENOIR, ET. AL., *Appellants.*

AND

JOSEPH NORMAN RITCHIE,

Respondent.

APPELLANTS' FACTUM.

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FACTUM.

SUPREME COURT OF CANADA, 1877.

Appeal from the Supreme Court at Halifax, Nova Scotia, to the Supreme Court of Canada.

In the matter of the application of JOSEPH N. RITCHIE for the recognition of his rank and precedence as Queen's Counsel.

CASE ON BEHALF OF THE APPELLANTS.

This Appeal is taken from the judgment of the Supreme Court of Nova Scotia of the 26th March, 1877, making a Rule Nisi absolute, and granting rank and precedence to Joseph N. Ritchie over all Queen's Counsel appointed in and for the Province of Nova Scotia since the 26th day of December, 1872, and setting aside letters patent, dated the 27th day of May, 1876, regulating the precedence of certain Queen's Counsel, including the Appellants, under the provisions of Section 2, of Chapter 21, of the Acts of 1874, of the Province of Nova Scotia, entitled, "An Act to Regulate the Precedence of the Bar of Nova Scotia." 10

The Rule Nisi sets forth more particularly the grounds on which the application was made, but the decision of the Court was in substance as follows :—

1. That the Letters Patent of precedence, issued by the Lieutenant Governor of Nova Scotia, were not issued under the Great Seal of that Province.

2. That 37 Vic. Chs. 20 and 21 of the Acts of Nova Scotia were not ultra vires.

3. That it was not the intention of Sec. 2 of Chapter 24 of the Acts of Nova Scotia for 1874, that it should be retrospective in its effect. 20

4. That as an intention on the part of the Legislature that the Acts in question should have a retrospective effect is by no means clear, the Letters Patent of the 27th May, A. D., 1876, cannot affect the precedence of Mr. Ritchie.

The judgment of the Court was delivered by Sir William Young, C. J., and concurred in by DesBarres and McDonald, J. J., Mr. Justice Wilkins dissenting from the decision of the Court as to the Great Seal, and Mr. Justice James as to the Great Seal, and the question of precedence

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THE REASONS FOR THIS APPEAL ARE:

1. Because, as the Great Seal imports absolute verity, the Court where any document purports to be sealed with the Great Seal, should give absolute faith to it as having been duly sealed by the authority of the Sovereign.

2. Because the Court cannot inquire into the custody and history of the Great Seal, and the relations between the Sovereign and the Keeper of the Great Seal in this Province. The Letters Patent of the 27th of May, 1876, having come direct from the Keeper of the Great Seal in this Province, with the Great Seal of the Province attached, and authenticated by the signature of the Lieutenant Governor and the Provincial Secretary, the Judges should recognize the same, and take judicial notice of its validity. 10

3. Because, as the alleged new Great Seal of Nova Scotia never was adopted or used as such by the Government of that Province, the old Great Seal never having ceased to be used and recognised as the Great Seal of the Province, remained the legal seal thereof.

4. Because, if any question existed as to the validity of the Great Seal attached to the Letters Patent of 27 May, 1876, it has been set at rest by legislation respecting the same.

2 Inst. 555, 6. c. b. Bro. Ab. *tit. patents*. Hales P. C. 171-7. 2 Comm. c. 21. 17 Vin. Ab. 71-8. Lord Melville's Case 29 How St. T. 707. Sir Geo. McKenzie's Works, I. 278. Baron Maseres Canadian Freeholder II. 238-243. Campbell's Lives of the Lord Chancellors and Keepers of the Great Seal, *introd.* also notes to vol. II. ch. 44. 40 Vict. c. 3, Acts of Canada. 40 Vict. ch. 2, Acts of Nova Scotia. 20

5. Because the validity of letters patent from the Crown cannot be summarily adjudicated upon by the Court.

6. Because, though the Crown was not represented at the argument, or made a party to the proceedings, the rule granted by the Court limits the prerogative of the Crown of regulating precedence at the Bar, as respects Queen's Counsel appointed since the 1st day of July, A. D., 1867.

7. Because the rule absolute was granted upon affidavits which were irregular and should not have been received by the Court.

8. Because the rule granted on the affidavit of John S. D. Thompson, dated the 7th March 1876, allowing either party to produce affidavits verifying copies of any documents touching the Great Seal, that might be produced by the Local Government and laid before the Local Legislature previous to the 9th of March, was irregular, and should not have been granted by the Court. 30

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4 Inst. 88. Br. Ab. *tit. Sire Facias*, 69. 185. Dyer 198. R. vs. Earl of Dorset, *S. C.* Raymond 156, 177. 2 Vent. 344. 2 T. R. 564. 17 Vin. Ab. 122, 155. Chitty Prerog. 244. 331. I. Stevens Comm, 629. Ransome vs. Eastern Counties Railway Comp. 6 Jur. N. S. 1908, O. P.

9 Because the Crown has the right of, from time to time, regulating precedence among Queen's Counsel.

10. Because the Crown, as the Fountain of Justice, and of Honours, can at its pleasure, either expressly or impliedly cancel or supersede Letters Patent creating Queen's Counsel, or regulating precedence at the Bar.

James' R. (Nova Scotia) 182. 4 Inst. 165, 363. 1 Comm. 271, 353, 396. 3 Comm. 27, 29. Chitty Prerog. 77, 82, 107, 112, 132, 331. *In re Bedard* 7 Moore, P. C. C. 23. Manning's Case of the Sergeants, 127. Droit Publique de Domat. Liv. i. tit. ii. sec. 2 p. 10. also No. 3, pp. 67, 78, (Fol. Ed 1745.) 10

11. Because Mr. Ritchie's appointment as Queen's Counsel is referred to in the Letters Patent of precedence in question.

12. Because as the office of Queen's Counsel in Nova Scotia is one of honour and precedence, to which no fees or emoluments are attached, the appointment of Mr. Ritchie as Queen's Counsel did not thenceforward debar the Crown from issuing letters patent granting precedence over him to members of the Bar not otherwise entitled to priority.

13. Because as the right of the Lieutenant Governor to exercise the prerogative of appointing Queen's Counsel, and of regulating precedence at the Bar, enjoyed by him up to 1867, was confirmed and recognized by the British North America Act, 1867, and was also clearly declared and affirmed by 37 Vict., Chs. 20 and 21 of Acts of Nova Scotia, it cannot be taken away or limited by the Court. 20

14. Because the appointment of Mr. Ritchie as Queen's Counsel on the 27th day of December, 1872, did not thenceforward debar the Legislature from empowering the Lieutenant Governor to regulate the precedence of the Queen's Counsel appointed since 1867 and of other members of the Bar to whom letters patent of precedence might be issued, nor did it render Sec. 2 of 37 Vict., Ch. 21 nugatory and inoperative as respects Mr. Ritchie's precedence as Queen's Counsel.

15. Because the intention of the Legislature in 37 Vict. ch. 21 of the Acts of Nova Scotia 30 that members of the Bar appointed Queen's Counsel after the 1st day of July, A. D., 1867, as well as members of the Bar to whom from time to time patents of precedence are granted, "shall severally have such precedence as may be assigned to them by Letters Patent which may be issued under the Great Seal of the Province," is clear and positive.

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16. Because as the Court held that the intention of Sec. 2 of Ch. 21, as respects the Queen's Counsel appointed since 1867, is by no means clear, the prerogative of the Crown of regulating precedence at the Bar, which can only be taken away by clear and explicit terms, still continued, subject only to the provision that it should be exercised by means of Letters Patent under the Great Seal.

Earl of Cumberland's case, 8 Rep. 169. Bro. Ab. *tit.* patents, pl. 2. Rex vs. Chester, et al., 5 Mod. 301. Rex. vs. Kempt, 4 Mod. 277. Rex. vs. Foster, Freem. R. 70. Fowler vs. Chatterton 3 M & P. 628. Freeman et al vs. Moyes, 1 Ad. & E. 338. *re* Barham, 8 B. & C. p. 104. Potters Dwaris on Stat. p. 78. Chitty on Prerog. 383.

P. H. LENOIR.

R. G. HALIBURTON.